

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Patrick Yu	Team: Squad #16	CCRB Case #: 201509988	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 11/21/2015 11:42 PM, Sunday, 11/22/2015, Monday, 11/23/2015, Tuesday 11/22/2016, Wednesday, 11/23/2016	Location of Incident: 495 East 158th Street; 42nd Precinct, 40th Precinct, and PSA7 Precinct stationhouse	Precinct: 40	18 Mo. SOL 5/21/2017	EO SOL 5/21/2017	
Date/Time CV Reported Mon, 11/23/2015 10:34 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 11/23/2015 10:34 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM John Zorrilla	22991	933511	PSA 7
2. SGT Jonathan Benintendo	00295	927919	042 PCT
3. SGT Eryv Diaz	03968	932547	PSA 3
4. LT Neil Zuber	00000	931483	PSA 7

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Sincerae Tinsley	01002	945052	042 PCT
2. SGT Miguel Frias	1309	930184	PSA 7
3. POM Giovanni Laguna	26882	952959	PSA 7
4. POM Jason Zupka	05891	934275	PSA 7
5. SGT Pawel Lachowski	3802	940350	040 PCT
6. POM Elvis Duran	21865	946965	PSA 7
7. POM Manolin Molina	27653	936051	PSA 7

Officer(s)	Allegation	Investigator Recommendation
A.POM John Zorrilla	Discourtesy: On November 21, 2015, at the location of 495 East 158th Street, in the Bronx, Police Officer John Zorrilla spoke discourteously to § 87(2)(b)	
B.POM John Zorrilla	Discourtesy: On November 21, 2015, at the location of 495 East 158th Street, in the Bronx, Police Officer John Zorrilla spoke discourteously to § 87(2)(b)	
C.POM John Zorrilla	Off. Language: On November 21, 2015, at the location of 495 East 158th Street, in the Bronx, Police Officer John Zorrilla made remarks to § 87(2)(b) based upon race.	
D.POM John Zorrilla	Force: On November 21, 2015, at the location of 495 East 158th Street, in the Bronx, PO John Zorrilla used pepper spray against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
E.SGT Jonathan Benintendo	Abuse: On November 22, 2015, at the 42nd Precinct stationhouse, Sergeant Jonathan Benintendo did not process § 87(2)(b)'s complaint regarding an officer.	
F.POM John Zorrilla	Abuse: On November 22, 2015, at the PSA 7 stationhouse, Police Officer John Zorrilla did not process § 87(2)(b)'s complaint regarding an officer.	
G.POM John Zorrilla	Abuse: On November 22, 2015, at the PSA 7 stationhouse, Police Officer John Zorrilla refused to provide his shield number to § 87(2)(b).	
H.SGT Eryv Diaz	Abuse: On November 22, 2015, at the PSA 7 stationhouse, Sergeant Eryv Diaz did not process § 87(2)(b)'s complaint regarding an officer.	
I.POM John Zorrilla	Abuse: On November 23, 2015, at the PSA 7 stationhouse, Police Officer John Zorrilla arrested § 87(2)(b).	
J.LT Neil Zuber	Abuse: On November 23, 2015, at the PSA 7 stationhouse, Lieutenant Neil Zuber supervised the arrest of § 87(2)(b).	
K.SGT Eryv Diaz	Discourtesy: On November 22, 2015, at the PSA 7 stationhouse, Sergeant Eryv Diaz spoke discourteously to § 87(2)(b).	

### Case Summary

On November 23, 2015, § 87(2)(b) filed this complaint with the CCRB via the Automated Messaging System. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

On November 21, 2015, at approximately 11:42 p.m., § 87(2)(b) and his friend, § 87(2)(b) approached a black cab parked in front of 495 East 158<sup>th</sup> Street in the Bronx. § 87(2)(b) began speaking with a friend, § 87(2)(b) who was the patron inside the cab. As they were speaking, PO John Zorrilla and PO Giovanni Laguna drove past. PO Zorrilla allegedly asked § 87(2)(b) “Can you fucking move?” (**Allegation A**). PO Zorrilla exited the vehicle and approached § 87(2)(b) and asked, “Why didn’t you fucking move?” (**Allegation B**). PO Zorrilla also asked § 87(2)(b) “Didn’t I tell you to get the fuck off the street?” (**subsumed within Allegation A**). § 87(2)(b) explained to PO Zorrilla that he should tell the driver to the move and in response, PO Zorrilla allegedly told § 87(2)(b) “Oh, you must be the fucking smart one, you fucking African” (**Allegation C**). § 87(2)(b) told PO Zorrilla not to speak in such a way. PO Zorrilla subsequently deployed his pepper spray at § 87(2)(b) (**Allegation D**).

On November 22, 2015, at approximately 12:00 a.m., § 87(2)(b) and § 87(2)(b) went to the 42<sup>nd</sup> Precinct stationhouse to file a complaint. Sgt. Benintendo allegedly told § 87(2)(b) that that it was not within the jurisdiction of his precinct and that they had to go to the 40<sup>th</sup> Precinct stationhouse (**Allegation E**).

On November 22, 2015, at approximately 11:30 p.m., § 87(2)(b) and § 87(2)(b) entered the PSA7 stationhouse. § 87(2)(b) allegedly told PO Zorrilla that they wanted to file a complaint and requested for his shield number (**Allegations F and G**). Sgt. Diaz was subsequently informed that § 87(2)(b) wanted to file a complaint (**Allegation H**). However, neither of the officers assisted § 87(2)(b) with processing his complaint. On November 23, 2015, at approximately 12:55 a.m., PO Zorrilla arrested § 87(2)(b) at the stationhouse and Lt. Neil Zuber was indicated as the supervising officer on the arrest report (**Allegations I and J**). At the stationhouse, Sgt. Diaz allegedly told § 87(2)(b) “You could get the fuck out the precinct” (**Allegation K**). § 87(2)(b) was charged with Obstruction of Governmental Administration (OGA) and Disorderly Conduct and § 87(2)(b) was issued a summons for Disorderly Conduct for the incident that on November 21, 2015 (Board Review 19 and 32).

§ 87(2)(b) s claim that PO Zorrilla was intoxicated during the first incident on November 21, 2015 was referred to IAB under CCRB 201605336.

This case exceeds the 90 day benchmark of. As explained above, this case was reopened 25 weeks after the complaint was initially filed. The case was further delayed due to victims and witness contacts the repeated rescheduling of the officers.

There is no relevant video footage depicting any of the incidents.

### **Mediation, Civil and Criminal Histories**

- This case was unsuitable for mediation due to § 87(2)(b)'s arrest.
- § 87(2)(b) filed a Notice of Claim seeking \$1 million in regards to this incident and a 50H Hearing was held on § 87(2)(b) (Board Review 18 and 30).
- § 87(2)(b) has had no criminal convictions in the past 10 years (Board Review 31).
- § 87(2)(b), § 87(2)(a) CVR § 50-b [REDACTED]
- § 87(2)(b) [REDACTED]
- § 87(2)(b) [REDACTED]
- § 87(2)(b) [REDACTED]

### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint filed by § 87(2)(b) (Board Review 14).
- This is the first CCRB complaint § 87(2)(b) has been involved in (Board Review 15).
- PO Zorrilla has been a member of the NYPD for 13 years and has had 11 prior CCRB allegations pleaded against him in five cases.
  - In case number 201507072, an allegation of interfering with a civilian's ability to record was substantiated by the CCRB and Command Discipline B was recommended. To date, the NYPD's disposition is pending.
- Sgt. Benintendo has been a member of the NYPD for 15 years and has had two prior CCRB allegations pleaded against him in two cases; none of the allegations have been substantiated. § 87(2)(g) [REDACTED]
- Sgt. Diaz has been a member of the NYPD for 13 years and has had five prior CCRB allegations pleaded against him in three cases; none of the previous allegations have been substantiated. § 87(2)(g) [REDACTED]
- Lt. Zuber has been a member of the NYPD for 14 years and has had 25 prior CCRB allegations pleaded against him in 10 cases.
  - In case number 201303672, an allegation of a search was substantiated by the CCRB and charges were recommended. The NYPD imposed no penalty.

### **Potential Issues**

- During his CCRB interview, § 87(2)(b) identified the patron inside the black cab during the first incident as § 87(2)(b) and identified § 87(2)(b) as the third individual that was present at the PSA 7 stationhouse during his arrest. § 87(2)(b) stated that § 87(2)(b) was the patron inside the black cab and was also the individual present during § 87(2)(b)'s arrest at the PSA 7 stationhouse. In a phone statement, § 87(2)(b) corroborated with § 87(2)(b)'s account.
- § 87(2)(b) and § 87(2)(b) did not provide a sworn statement in connection with the investigation.

- § 87(2)(b) and § 87(2)(b) provided a phone statement, but failed to provide sworn statements despite contact attempts. § 87(2)(b) did not provide a phone statement and did not provide a sworn statement despite contact attempts.
- As of November 13, 2016, the IAB investigation is still pending. As such, the CCRB has not received the IAB case file or any of the officers' memo books.

## **Findings and Recommendations**

### **Explanation of Subject Officer Identification**

- In a follow up call, § 87(2)(b) stated that after he was pepper sprayed, he went to a nearby precinct located on Third Avenue and East 158<sup>th</sup> Street in the Bronx (Board Review 02). A query of Google Maps indicated that the 42<sup>nd</sup> Precinct stationhouse was the closest to the incident location and is located one block away from Third Avenue and East 158<sup>th</sup> Street. Therefore, the investigation determined that § 87(2)(b) entered the 42<sup>nd</sup> Precinct stationhouse.
- § 87(2)(b) stated that at the 42<sup>nd</sup> Precinct stationhouse he initially spoke with an officer at the desk, described as a Hispanic male officer in his 40s, who directed him to speak with a male sergeant (Board Review 01). § 87(2)(b) stated that he identified this officer as a sergeant because he was sitting behind the desk and the officers directed § 87(2)(b) to this officer. § 87(2)(b) described the sergeant as a white male, wearing uniform, chubby, and he also noted that the officer was possibly "Italian." The 42<sup>nd</sup> Precinct Tour 1 Roll Call for November 22, 2015, showed three sergeants on duty at the time of incident: Sgt. Sincerae Tinsley, Sgt. Valorie Montes, and Sgt. Benintendo (Board Review 22). Sgt. Benintendo was the only male sergeant on duty and was assigned to work as the patrol supervisor. Sgt. Tinsley's assignment was changed from patrol supervisor to desk officer for that day. The telephone switchboard operator, PO Bassen, has since left the service. Sgt. Benintendo moderately resembles § 87(2)(b)'s description of the subject officer and Sgt. Benintendo acknowledged that he was by the desk and inside the stationhouse during his tour (Board Review 05). Given that Sgt. Benintendo was the only male sergeant fitting the description, **Allegation E** was pleaded against Sgt. Benintendo.

### **Allegations not pleaded**

#### **Abuse of Authority: Refusal to process a civilian complaint-**

§ 87(2)(b) alleged that on November 22, 2015, at 40<sup>th</sup> Precinct stationhouse, he informed Sgt. Lachowski that he wanted to file a complaint and requested for PO Zorrilla's name and shield number (Board Review 01). § 87(2)(b) stated that Sgt. Lachowski told him that he could either call CCRB or go to the PSA7 stationhouse and provided § 87(2)(b) with PO Zorrilla's name and command. § 87(2)(b) was pleased with Sgt. Lachowski's help. As such, this allegation has not been pleaded.

#### **Abuse of Authority: Threat of summons-**

In his unverified phone statement, § 87(2)(b) alleged that PO Zorrilla threatened to issue him a summons (Board Review 04). § 87(2)(b) did not corroborate § 87(2)(b)'s account. Moreover, § 87(2)(b) was issued a summons the following day in regards to the incident. Therefore, this allegation has not been pleaded.

**Allegation A –Discourtesy: On November 21, 2015, at the location of 495 East 158th Street, in the Bronx, Police Officer John Zorrilla spoke discourteously to § 87(2)(b)**

§ 87(2)(b), § 87(2)(g)

During his CCRB interview, § 87(2)(b) alleged that as an unmarked police vehicle drove past, PO Zorrilla stated to § 87(2)(b) “Can you fucking move?” (Board Review 01). In his unverified phone statement, § 87(2)(b) alleged that PO Zorrilla stated, “Didn’t I tell you to get the fuck off the street?” (Board Review 04). In his unverified phone statement, § 87(2)(b) stated that he did not hear anyone using any profanities during the incident (Board Review 03). As discussed above, the investigation was unable to contact § 87(2)(b) or § 87(2)(b) to obtain a more detailed statement.

In his CCRB testimony, PO Zorrilla stated that he told § 87(2)(b) “That vehicle has to be moved because it is blocking traffic” and also asked § 87(2)(b) what was the problem (Board Review 07). In response, § 87(2)(b) stated, “No, what’s your problem.” PO Zorrilla then said, “Excuse me?” § 87(2)(b) then told PO Zorrilla that he had space to go past and stated that he was the one that was stopping traffic. PO Zorrilla did not recall if any civilians used any profanities during the incident and did not recall asking § 87(2)(b) “Why didn’t you fucking move?” PO Zorrilla denied using any profanities during the incident.

PO Laguna stated that PO Zorrilla initially told § 87(2)(b) “You have to get out the street because we could barely fit through” (Board Review 08). § 87(2)(b) then responded, “No you’re good.” PO Zorrilla subsequently told § 87(2)(b) “I said you got to get out the street.” PO Laguna did not hear PO Zorrilla say, “I told you to move,” or ask, “Why didn’t you fucking move?” Additionally, PO Laguna did not hear PO Zorrilla saying the word “fucking” or using any profanities.

§ 87(2)(b), § 87(2)(g)

**Allegation B –Discourtesy: On November 21, 2015, at the location of 495 East 158th Street, in the Bronx, Police Officer John Zorrilla spoke discourteously to § 87(2)(b)**

**Allegation C –Offensive Language: On November 21, 2015, at the location of 495 East 158th Street, in the Bronx, Police Officer John Zorrilla made remarks to § 87(2)(b) based upon race.**

§ 87(2)(b), § 87(2)(g)

In his CCRB testimony, § 87(2)(b) stated that when PO Zorrilla approached him, PO Zorrilla asked him, “I told you to move, why didn’t you fucking move?” and stated, “I told you to fucking move.” § 87(2)(b) told PO Zorrilla that if he wanted the vehicle to move then he should have told the driver to move. PO Zorrilla subsequently stated, “Oh, you must be the fucking smart one, you fucking African.” § 87(2)(b), § 87(2)(a) Gen. Mun. § 50-h(3) (Board Review 30).

In an unverified phone statement, § 87(2)(b) stated that when § 87(2)(b) tried to speak with PO Zorrilla, PO Zorrilla responded by saying, “Am I fucking talking to you?” As discussed above, § 87(2)(b) did not provide a sworn testimony to the CCRB.

In his unverified phone statement, § 87(2)(b) who was inside the cab during the incident, stated that he did not hear anyone using any profanities during the incident (Board Review 03). As discussed above, the investigation was unable to contact § 87(2)(b) to obtain a more detailed statement.

In his CCRB testimony, PO Zorrilla stated he was initially speaking with § 87(2)(b) and when § 87(2)(b) approached him he instructed § 87(2)(b) to return to the corner (Board Review 07). PO Zorrilla did not recall if any civilians used any profanities during the incident and did not recall asking § 87(2)(b) “Why didn’t you fucking move?” Moreover, PO Zorrilla denied saying, “I told you to fucking move” and denied saying, “You fucking African.” PO Zorrilla denied using any profanities or making offensive remarks in regards to a § 87(2)(b)’s race or ethnicity.

PO Laguna corroborated with PO Zorrilla’s account in regards to the order in which PO Zorrilla spoke with § 87(2)(b) and § 87(2)(b) (Board Review 08). PO Laguna stated that § 87(2)(b) was using profanities as he approached PO Zorrilla. PO Laguna only heard PO Zorrilla tell § 87(2)(b) to get back and did not hear any additional conversation. PO Laguna did not hear PO Zorrilla say, “I told you to move,” or ask, “Why didn’t you fucking move?” Additionally, PO Laguna did not hear PO Zorrilla saying the word “fucking” or using any profanities. Moreover, PO Laguna did not hear § 87(2)(b) indicate where he was from and did not hear PO Zorrilla saying, “Fucking African,” towards § 87(2)(b).

§ 87(2)(b), § 87(2)(g)

**Allegation D –Force: On November 21, 2015, at the location of 495 East 158th Street, in the Bronx, PO John Zorrilla used pepper spray against § 87(2)(b)**

It is undisputed that PO Zorrilla pepper sprayed § 87(2)(b)

In his CCRB testimony, § 87(2)(b) stated that PO Zorrilla approached him and stood approximately two feet away as they were speaking to each other (Board Review 01). § 87(2)(b) stated that his hands were out of his pockets and down by the side of his body. § 87(2)(b) denied moving his hands in front of his body or in the air at any point. § 87(2)(b) stated that he did not move his body or gesture his arms towards PO Zorrilla or PO Laguna. § 87(2)(b) stated that he was calm during the incident and denied screaming or using any profanities. § 87(2)(b) did not indicate whether PO Zorrilla told him to step back. § 87(2)(b) alleged that after he told PO Zorrilla not to speak to him obscenely, PO Zorrilla subsequently reached down to the side of his waistband and pulled out an object identified as a pepper spray

via the investigation. § 87(2)(b) subsequently felt a smack to his face and realized that PO Zorrilla had pepper sprayed him. § 87(2)(b) was unable to fully open his eyes. In response, § 87(2)(b) began to scream and used both of his hands to cover his eyes. § 87(2)(b) walked away while screaming for water, and eventually entered a grocery store down the street to obtain water. § 87(2)(b), § 87(2)(g), § 87(2)(a) Gen. Mun. § 50-h(3)

§ 87(2)(b)

§ 87(2)(b)

In his telephone statement, § 87(2)(b) corroborated with § 87(2)(b)'s testimony in that PO Zorrilla was the one who approached them and stood approximately a foot away (Board Review 04). § 87(2)(b) denied seeing § 87(2)(b) moving or making any threatening gestures. Additionally, § 87(2)(b) stated that PO Zorrilla suddenly pepper sprayed § 87(2)(b) as they were speaking. § 87(2)(b) subsequently stumbled and fell to the ground. § 87(2)(b) did not know where § 87(2)(b) went after he was pepper sprayed. As mentioned, § 87(2)(b) failed to provide a sworn testimony.

In his unverified phone statement, § 87(2)(b) also stated that PO Zorrilla approached § 87(2)(b) and § 87(2)(b) (Board Review 03). § 87(2)(b) did not see § 87(2)(b) doing anything besides speaking with the officers prior to seeing § 87(2)(b) being pepper sprayed. As stated above, § 87(2)(b) did not provide a sworn testimony in connection with the investigation.

In his CCRB testimony, PO Zorrilla stated that as he was initially instructing § 87(2)(b) to move the vehicle, § 87(2)(b) approached with his hands up in front of his body (Board Review 07). § 87(2)(b) subsequently stood approximately two feet away from PO Zorrilla and was being verbally aggressive. PO Zorrilla instructed § 87(2)(b) to return to the corner and § 87(2)(b) refused by saying, "No, you think because you are a police officer you could talk to people however you want and do whatever you want." § 87(2)(b) moved closer to PO Zorrilla while putting his hands up, PO Zorrilla described that § 87(2)(b) held his hands open with his palms turned to the side with all five fingers pointed towards PO Zorrilla inches away from his face, as he spoke. Based on § 87(2)(b)'s aforementioned action of putting his hands up, PO Zorrilla felt as if § 87(2)(b) was going to hit him. In response, PO Zorrilla ordered § 87(2)(b) three times to put his hands down, but § 87(2)(b) did not comply with PO Zorrilla's orders and continued to put his hands up in the same aforementioned manner. PO Zorrilla stated that there was nothing else that § 87(2)(b) was physically doing. PO Zorrilla stated that the last time he told § 87(2)(b) to not put his hand up, § 87(2)(b) took a step back, leaned his right shoulder back, and subsequently moved his upper body forward while pointing one finger at PO Zorrilla's face (approximately an inch or two away) while the rest of his fingers were curled and pointed towards himself. In response, PO Zorrilla took his pepper spray out and deployed it because he thought § 87(2)(b) was a threat and thought that § 87(2)(b) was going to hit him. PO Zorrilla's CCRB testimony was consistent with the details documenting the occurrence in § 87(2)(b)'s arrest report.

In his CCRB testimony, PO Laguna also stated that § 87(2)(b) approached the officers screaming as they were speaking to § 87(2)(b) (Board Review 08). PO Laguna was primarily interacting with § 87(2)(b) while PO Zorrilla was speaking to § 87(2)(b). At some point, PO Laguna heard PO Zorrilla tell § 87(2)(b) to get back. PO Laguna did not see where § 87(2)(b)



§ 87(2)(b) hands were at the time and stated that PO Zorrilla and § 87(2)(b) were standing approximately one or two feet away from each other. PO Laguna subsequently saw PO Zorrilla deploying his pepper spray. PO Laguna did not know where § 87(2)(b) went after PO Zorrilla deployed his pepper spray.

§ 87(2)(b)'s medical records from § 87(2)(b) Hospital indicated that § 87(2)(b) went to the hospital on § 87(2)(b) complaining of eye pains from being pepper sprayed by the police the previous day. The medical records noted that § 87(2)(b) sustained a corneal abrasion to his right eye. § 87(2)(b) was discharged and received eye drops and painkillers.

§ 87(2)(b), § 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

Prior to June 1, 2016, Patrol Guide Procedure 203-11 governing the use of force was still in effect. Patrol Guide Procedure 203-11 directs officers to use only that amount of force necessary to overcome resistance (Board Review 16). According to Patrol Guide Procedure 212-95, an officer may use pepper spray against an individual while attempting to arrest a resisting suspect. Pepper spray shall not be used in situations that do not require the use of physical force (Board Review 33). Medical attention must be obtained for the subject after they have been brought into custody.

§ 87(2)(b), § 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

§ 87(2)(b), § 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

§ 87(2)(b), § 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

**Allegation E –Abuse of Authority: On November 22, 2015, at the 42<sup>nd</sup> Precinct stationhouse, Sergeant Jonathan Benintendo did not process § 87(2)(b)'s complaint regarding an officer.**

§ 87(2)(b), § 87(2)(g)

In his testimony, § 87(2)(b) stated that he and § 87(2)(b) went to the 42<sup>nd</sup> Precinct stationhouse after the occurrence at 495 East 158<sup>th</sup> Street in the Bronx (Board Review 01). At the stationhouse, § 87(2)(b) informed an unidentified officer at the desk that he wanted to file a complaint. The officer directed § 87(2)(b) to speak with Sgt. Benintendo. § 87(2)(b) explained the incident to Sgt. Benintendo and also informed him that he wanted to file a complaint. In response, Sgt. Benintendo told § 87(2)(b) that it was not within the 42<sup>nd</sup> Precinct's jurisdiction and that § 87(2)(b) had to go to the 40<sup>th</sup> Precinct. § 87(2)(b) subsequently left the stationhouse without filing a complaint.

In his phone statement, § 87(2)(b) who accompanied § 87(2)(b) to the 42<sup>nd</sup> Precinct stationhouse, also stated that they were told that the incident location did not fall with their precinct and that they had to go to another precinct (Board Review 04). As mentioned above, § 87(2)(b) did not provide a sworn testimony.

Sgt. Benintendo did not have any independent recollection of this incident (Board Review 05). As discussed in the officer explanation section, Sgt. Benintendo was assigned to work as the Patrol Supervisor, but he admitted that he was at the stationhouse and behind the desk at the start of his tour. In his CCRB interview, Sgt. Benintendo stated that he did not recognize the photo of § 87(2)(b).

Sgt. Tinsley, who was the desk officer at the time, also did not have any independent recollection of § 87(2)(b) attempting to file a complaint at the stationhouse (Board Review 06). Sgt. Tinsley also did not recognize the photo of § 87(2)(b).

As discussed above in the officer explanation section, the Telephone Switchboard operator on duty at the time of incident has since left the service.

There are no entries in the command log indicating that § 87(2)(b) or any civilians attempted to file a complaint at the 42<sup>nd</sup> Precinct stationhouse (Board Review 23).

§ 87(2)(b), § 87(2)(g)

**Allegation F –Abuse of Authority: On November 22, 2015, at the PSA 7 stationhouse, Police Officer John Zorrilla did not process § 87(2)(b)'s complaint regarding an officer.**

**Allegation G –Abuse of Authority: On November 22, 2015, at the PSA 7 stationhouse, Police Officer John Zorrilla refused to provide his shield number to § 87(2)(b)**

§ 87(2)(b), § 87(2)(g)

In his CCRB testimony, § 87(2)(b) stated that on November 22, 2015, § 87(2)(b) and § 87(2)(b) went to the PSA 7 stationhouse with the intentions of filing a complaint for the incident that occurred the day prior. § 87(2)(b) stated that they saw PO Zorrilla upon entering the stationhouse and § 87(2)(b) told PO Zorrilla that that they wanted to file a complaint and asked for his badge number (Board Review 01). § 87(2)(b) stated that PO Zorrilla subsequently spoke with Sgt. Diaz. However, PO Zorrilla did not provide his shield number and § 87(2)(b) was not given the opportunity to file a complaint at the stationhouse.

§ 87(2)(b)'s unverified phone statement was largely consistent with § 87(2)(b)'s account on what transpired inside the stationhouse aside from the inconsistencies on which specific officer § 87(2)(b) spoke to (Board Review 04). § 87(2)(b) did not mention that he spoke with PO Zorrilla; instead, § 87(2)(b) stated that he spoke with PO Jason Zupka who told him that he would relay the message to Sgt. Diaz. Moreover, § 87(2)(b) did not indicate that he asked PO Zorrilla for his badge number.

In § 87(2)(b)'s unverified statement, § 87(2)(b) stated that § 87(2)(b) told PO Zupka something to the effect of getting an officer's badge number and filing a complaint (Board Review 03). § 87(2)(b) also affirmed that they also informed PO Zorrilla that they were there to see a sergeant in order to file a complaint. § 87(2)(b) did not indicate that § 87(2)(b) directly asked PO Zorrilla for his badge number.

PO Zorrilla stated that he was not aware of why § 87(2)(b) and § 87(2)(b) were in the stationhouse (Board Review 07). Moreover, PO Zorrilla stated that he was not aware that they wanted to file a complaint. PO Zorrilla stated that none of the civilians directly asked him for his shield number. However, at some point, PO Manolin Molina informed PO Zorrilla that an individual had requested his name and shield number and in response, PO Zorrilla wrote his shield number on a piece of paper and gave it to PO Molina.

PO Molina stated that he did not think any civilians asked PO Zorrilla for his name and shield number and did not think that he provided PO Zorrilla's information to any civilians (Board Review 12).

In his CCRB testimony, PO Zupka stated that he was the initial officer to speak with § 87(2)(b) and was informed by § 87(2)(b) that he wanted to file a complaint (Board Review 13). However, as PO Zupka was relaying § 87(2)(b)'s purpose for being at the stationhouse to Sgt. Diaz, PO Zorrilla interjected and stated that he had encountered the individuals on the previous day. PO Zupka did not have any further interactions with § 87(2)(b). PO Zupka did not indicate that he heard § 87(2)(b) attempting to file a complaint with PO Zorrilla or requesting his shield number.

Sgt. Diaz testified that he spoke with PO Zupka as § 87(2)(b) entered the stationhouse (Board Review 10). In his testimony, Diaz stated that none of the civilians specifically informed him that they wanted to file a complaint. Additionally, Sgt. Diaz did not hear any officers refuse to process a civilian complaint during the incident. Sgt. Diaz did not recall if any civilians asked PO Zorrilla for his name and shield number. Moreover, Sgt. Diaz denied hearing PO Zorrilla refuse to provide his name and shield to any civilians. Sgt. Diaz stated that at some point inside the stationhouse, he wrote down an officer's name and shield number on a piece of paper and handed it to one of the civilians upon their request for that officer's name and shield number.

When a complaint is made in-person at a patrol precinct against a uniformed member of service, an officer must interview the complainant and give them a Civilian Complaint Report to complete and sign, Patrol Guide Procedure 207-31 (Board Review 17). Courteously and clearly state your rank, name, shield number, and command, or otherwise provide them, to anyone who requests you to do so, Patrol Guide Procedure 203-09.

§ 87(2)(b), § 87(2)(g)

**Allegation H –Abuse of Authority: On November 22, 2015, at the PSA 7 stationhouse, Sergeant Ervy Diaz did not process § 87(2)(b)'s complaint regarding an officer.**

It is undisputed that § 87(2)(b) attempted to file a complaint with Sgt. Diaz at the PSA 7 stationhouse.

As stated in the above allegation, § 87(2)(b) stated that on November 22, 2015, § 87(2)(b) and § 87(2)(b) went to the PSA 7 stationhouse with the intentions of filing a complaint for the incident that occurred the day prior. Moreover, according to § 87(2)(b)'s unverified phone statement, § 87(2)(b) stated that he spoke with PO Jason Zupka who told him that he would relay the message to Sgt. Diaz. However, § 87(2)(b) was instructed to leave the stationhouse without being given the opportunity to file a complaint. In an unverified phone statement, § 87(2)(b) did not indicate that § 87(2)(b) spoke with Sgt. Diaz in regards to filing a complaint.

In his CCRB testimony, PO Zupka stated that he was the initial officer to speak with § 87(2)(b) and was informed by § 87(2)(b) that he wanted to file a complaint (Board Review 13). PO Zupka informed Sgt. Diaz that § 87(2)(b) and § 87(2)(b) were at the stationhouse to file a complaint and that he was going to give them the CCRB's number. Sgt. Diaz acknowledged PO Zupka and said, "Fine." However, at this point, PO Zorrilla interjected and stated that he had encountered the individuals on the previous day. Subsequently, PO Zorrilla and Sgt. Diaz took over and PO Zupka returned to his post by the telephone switchboard desk. PO Zupka denied having any further interactions with § 87(2)(b).

§ 87(2)(b), § 87(2)(g)

It is undisputed that § 87(2)(b) was arrested at the PSA 7 stationhouse at approximately 12:55 a.m. on November 23, 2015, for the incident that occurred on November 21, 2015 at 495 East 158<sup>th</sup> Street in the Bronx.

There were no notable differences between § 87(2)(b)'s testimony during his 50H Hearing and his CCRB testimony (Board Review 18). In an unverified phone statement, § 87(2)(b) stated that after he was pepper sprayed, § 87(2)(b) stumbled and fell on the ground (Board Review 04). § 87(2)(b) did not know where § 87(2)(b) went after seeing him on the ground. In an unverified phone statement, § 87(2)(b) also stated that he did not see where § 87(2)(b) went after he was pepper sprayed (Board Review 03). As previously mentioned, neither § 87(2)(b) nor § 87(2)(b) provided a verified testimony.

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the scene, PO Zorrilla informed Sgt. Frias, who responded after the civilians had left, of the incident. PO Zorrilla was directed to do a canvass. PO Zorrilla did not indicate the reason for a canvass, but stated that his concern was to obtain medical stationhouse for § 87(2)(b). However, the canvass yielded negative results for § 87(2)(b) and PO Zorrilla was instructed to document the incident in his memo book. PO Zorrilla denied preparing any documentation aside from the memo book entry. On November 22, 2015, PO Zorrilla subsequently saw § 87(2)(b) at the stationhouse and informed Sgt. Diaz of the incident that occurred on the previous day. PO Zorrilla was informed by Sgt. Diaz that Lt. Zuber stated to arrest § 87(2)(b). PO Zorrilla stated that he was not informed of the charges and that he independently drafted the charges based on his own observations. He stated that he charged § 87(2)(b) with disorderly conduct and obstructing governmental administration because he interfered with his duties of addressing the vehicle that was parked in a manner that blocked traffic. The complaint report (UF61) was drafted at the time § 87(2)(b)'s arrest report was prepared (Board Review 19 and 20). The details between § 87(2)(b)'s arrest report and PO Zorrilla's CCRB testimony were consistent.

PO Laguna stated that he did not have any discussions with PO Zorrilla in regards to why they were going to approach § 87(2)(b) (Board Review 08). PO Laguna stated that he approached § 87(2)(b) because he was impeding vehicular traffic which was a summons-able violation. However, PO Laguna stated that he had no intent of issuing § 87(2)(b) a summons. As they spoke with § 87(2)(b) to tell him to get off the street, § 87(2)(b) came from behind the officers from the sidewalk and began screaming and cursing. PO Zorrilla began speaking with § 87(2)(b) and at some point PO Zorrilla subsequently pepper sprayed § 87(2)(b). PO Laguna did not know what occurred after but he did not see § 87(2)(b) again. PO Laguna stated that the crowd that had gathered eventually dispersed on their own accord or PO Zorrilla instructed the crowd to disperse. PO Laguna stated that they subsequently canvassed for § 87(2)(b) in order to arrest him for obstructing governmental administration because § 87(2)(b) was interfering with a police investigation with § 87(2)(b). However, during the interview, when he was initially asked whether he observed § 87(2)(b) commit any violations or crimes which he could have been arrested for during the incident PO Laguna stated that he did not make such observations. PO Laguna stated that the incident concluded and he had no further interactions with § 87(2)(b) or § 87(2)(b) after the canvass yielded negative results. PO Laguna denied preparing any additional documents to record this incident aside from creating a memo book entry. Moreover, he was not present during § 87(2)(b)'s arrest on November 22, 2015.

In his CCRB testimony, Sgt. Frias responded to a cellphone call from PO Laguna for additional units at the scene (Board Review 11). Sgt. Frias did not recall if PO Zorrilla mentioned that he was going to issue a summons or effect an arrest during the incident. However, Sgt. Frias later stated that PO Zorrilla told him that he attempted to place § 87(2)(b) under arrest for OGA after PO Zorrilla pepper sprayed him. Sgt. Frias instructed the officers to canvass for § 87(2)(b) to see if he needed medical attention and possibly to arrest him based on the information PO Zorrilla gave him. The canvass yielded negative results. Sgt. Frias instructed PO Zorrilla and PO Laguna to document the incident in their memo books.

Sgt. Diaz stated that on November 22, 2015, he was informed by PO Zorrilla of the prior interaction with § 87(2)(b) and § 87(2)(b) specifically that § 87(2)(b) ran away when PO Zorrilla attempted to place § 87(2)(b) in handcuffs (Board Review 10). After receiving the

information from PO Zorrilla, Sgt. Diaz determined that § 87(2)(b) was going to be arrested for OGA, but wanted to confirm with Lt. Zuber, who was the supervisor on duty, in order to verify the charges. Sgt. Diaz contacted Lt. Zuber via phone and explained the circumstances to Lt. Zuber, specifically that there was an OGA situation, PO Zorrilla was involved, and that § 87(2)(b) was in the stationhouse. In response, Lt. Zuber confirmed that this was an OGA arrest. Lt. Zuber did not provide Sgt. Diaz with any additional instructions. Sgt. Diaz instructed PO Zorrilla to arrest § 87(2)(b) for OGA. Sgt. Diaz denied reviewing § 87(2)(b)'s arrest paperwork and was not aware if there were any additional charges against § 87(2)(b).

The Event summary yielded negative results for any radio runs regarding this incident (Board Review 21).

§ 87(2)(b), § 87(2)(g)

[REDACTED]

According to PO Zorrilla's account, he did not have any intention to arrest § 87(2)(b) at 495 East 158<sup>th</sup> Street on November 21, 2015. PO Zorrilla did not indicate that he made an effort to initiate an arrest prior to and after deploying his pepper spray and there was no documentation that was prepared, prior to his arrest the next day, supporting that § 87(2)(b) had committed a crime or was going to be arrested. Even though a canvass was conducted, PO Zorrilla did not indicate that he was going to arrest § 87(2)(b) if he was to be found. Additionally, aside from the canvass there was no additional effort made to arrest or even identify § 87(2)(b). Furthermore, § 87(2)(b) was arrested a day after the incident when § 87(2)(b) and his friends entered the stationhouse to file a complaint.

§ 87(2)(b), § 87(2)(g)

[REDACTED]

**Allegation J –Abuse of Authority: On November 23, 2015, at the PSA 7 stationhouse, Lieutenant Neil Zuber supervised the arrest of § 87(2)(b)**

It is undisputed that Lt. Zuber is the supervising officer for § 87(2)(b)'s arrest. On the arrest paperwork, § 87(2)(b) was arrested on November 23, 2015, and Lt. Zuber was recorded as the supervising officer.

Lt. Zuber stated that on November 22, 2015 as he was out in the field, he received a phone call from Sgt. Diaz (Board Review 09). Sgt. Diaz asked Lt. Zuber a hypothetical question in regards to whether an officer could issue summonses to two individuals who could not be apprehended during a previous incident. Sgt. Diaz then stated that one individual was stopped the previous day and another individual became involved by trying to pull the initial person away. Lt. Zuber was also informed that one of the individuals was pepper sprayed and subsequently both individuals ran away. Lt. Zuber told Sgt. Diaz that if they could positively identify the two individuals then a summons could be issued. Lt. Zuber also told Sgt. Diaz that based on the information it sounded like grounds for an arrest for OGA. Lt. Zuber stated that he was not informed that the incident was occurring at the time of the call or the people/officers that were involved. Lt. Zuber further stated that he was not provided with any specific details until he returned to the stationhouse later that day. PO Zorrilla presented Lt. Zuber with the arrest paperwork noting that Lt. Zuber was the supervising officer. Lt. Zuber stated that he admonished PO Zorrilla and told him not to put him down as the supervising officer on arrest paperwork again because he did not know that there was an actual arrest at the time. However, after interviewing PO Zorrilla and reviewing the arrest report, Lt. Zuber stated that the arrest was valid and that the details matched with PO Zorrilla's account.

As further detailed above, in Sgt. Diaz's CCRB interview, Sgt. Diaz stated that after receiving information from PO Zorrilla, he called Lt. Zuber to verify the charges for the arrest (Board Review 10). Sgt. Diaz explained the circumstances to Lt. Zuber, specifically that there was an OGA situation, PO Zorrilla was involved, and that § 87(2)(b) was in the stationhouse. In response, Lt. Zuber confirmed that this was an OGA arrest. Lt. Zuber did not provide Sgt. Diaz with any additional instructions.

Lt. Zuber testified that he was initially not told of the specifics of the incident and stated that it was a hypothetical question on whether to arrest or summons the individuals. § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g)

**Allegation K –Discourtesy: On November 22, 2015, at the PSA 7 stationhouse, Sergeant Ervy Diaz spoke discourteously to** § 87(2)(b)

§ 87(2)(b), § 87(2)(g)



In an unverified phone statement, § 87(2)(b) alleged that when he asked Sgt. Diaz why § 87(2)(b) was being arrested, Sgt. Diaz stated, “You could get the fuck out the precinct” (Board Review 04). As noted above, § 87(2)(b) failed to provide a sworn testimony.

Neither § 87(2)(b) nor § 87(2)(b) who were both present at the stationhouse during the incident, indicated that Sgt. Diaz spoke discourteously to § 87(2)(b) at the stationhouse (Board Review 01 and 03). As noted above, § 87(2)(b) failed to provide a sworn testimony.

Sgt. Diaz denied saying the word “fuck” or stating any discourtesies during the incident (Board Review 10). Sgt. Diaz denied saying, “You could get the fuck out the precinct.” PO Zupka, who was the Telephone Switchboard operator at the time of incident, did not hear Sgt. Diaz telling any of the civilians to leave the stationhouse (Board Review 13). Moreover, he did not recall Sgt. Diaz saying “fuck” or say, “You could get the fuck out the precinct.” PO Zorrilla testified that he did not hear any officers using any profanities or saying, “Get the fuck out the precinct” (Board Review 07). PO Molina, who was also in the stationhouse when § 87(2)(b) and his friends entered, did not recall hearing Sgt. Diaz say, “You could get the fuck out the precinct,” or using any profanities (Board Review 12).

§ 87(2)(b), § 87(2)(g)

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Squad:

Investigator: \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date